

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHNNIE EDWARDS,

Petitioner(s),

CASE NUMBER: 08-12874

HONORABLE VICTORIA A. ROBERTS

v.

NICK J. LUDWICK,

Respondent(s).

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ORDER ADOPTING REPORT AND RECOMMENDATION

On March 25, 2010, Magistrate Judge Paul J. Komives submitted a Report and Recommendation (R&R) (Doc. 18) recommending that the Court DENY Petitioner's Application for Writ of Habeas Corpus (Doc. 1).

On May 14, 2010, Petitioner filed objections to the Magistrate's R&R and requested an evidentiary hearing (Doc. 22).

Petitioner says the Magistrate erred by concluding that Petitioner seeks an evidentiary hearing related to his *trial* counsel's cross examination of the prosecution's medical expert and his *trial* counsel's failure to retain a defense expert to challenge the prosecution's strangulation evidence. Petitioner says he seeks to challenge his *appellate* counsel's refusal to bring a claim on direct appeal challenging his trial counsel's failure to consult with an expert witness to rebut the prosecutor's strangulation theory, and he requests an evidentiary hearing on this claim (which he says his appellate counsel refused to request). However, as the Magistrate concluded, this claim is not currently before the Court.

Petitioner originally raised this claim in his habeas petition, but, after Respondent filed an answer seeking dismissal of the petition because Petitioner failed to exhaust this and other claims, Petitioner moved the Court to delete the unexhausted claims and proceed on the remainder of the claims. (Doc. 9). The Court granted this motion. (Doc. 10). Therefore, the claim that Petitioner now advances in his objection to the R&R is not before the Court; Petitioner is not entitled to an evidentiary hearing to develop a claim not before the Court.

For this reason, the Court **OVERRULES** Petitioner's objections and **DENIES** his request for an evidentiary hearing.

Because the Court has not received objections from the Petitioner addressing any of the claims currently before the Court, it **ADOPTS** the Magistrate Judge's R&R.

Petitioner's Application for Writ of Habeas Corpus is **DENIED**.

For the reasons stated in the R&R, Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: June 20, 2011

The undersigned certifies that a copy of this document was served on the attorneys of record and Johnnie Edwards by electronic means or U.S. Mail on June 20, 2011.

s/Linda Vertriest
Deputy Clerk